

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.378 OF 2004
IN
SUMMARY SUIT NO.661 OF 2004

Sujatha S.Kurdekar	Plaintiff
V/s.	
Bank of Baroda	Defendant
And	
Emirates Bank International	Applicant/ Intervenor

Mr.I.S. Thakur for the Applicant.

Mr.Bhandari i/b Bhandari & Bhandari for the Plaintiff.

Ms.Rekha Tawde i/b M.V. Kini for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 17TH JANUARY, 2006.

P.C. :-

1. This Chamber Summons has been taken out by the Applicant, Emirates Bank International, to be impleaded as Defendant No.2 to the above suit.

2. The suit is filed as a Summary Suit to recover an amount of Rs.10,49,516/- together with interest on the principal sum of Rs.5,49,850/- at the rate of 18% p.a. from the date of the filing of the suit till payment.

3. The Plaintiff's case is that here son one

Sanjay Subhash Kurdekar, who was working in Dubai remitted to her account with the Defendant a sum of Rs.5,49,850/-. The said amount was credited to her account on 29th September, 1998. However, on 7th October, 1998 the amount was unilaterally transferred by the Defendant by debiting her account to a "Sundry Deposit" account of the Defendant. In these circumstances, the Plaintiff filed the above suit.

4. It is necessary at this stage to refer to the facts on the basis whereof the Applicant seeks to be impleaded as a Defendant. According to the Applicant, the said Sanjay caused the said amount to be remitted to the Plaintiff's account as aforesaid by forging the signature of his employer M/s.Arabesque Decor and thereafter absconded. The Applicant remitted the amount to the Plaintiff's account with the Defendant believing the signature to be genuine. Upon being informed that the signature was forged, the Applicant on the very next day i.e. on 30th September, 1998 called upon the Defendant to stop payment thereof to the Plaintiff and to remit the amount to it.

5. The question therefore that falls for consideration is whether the said Sanjay has forged the signature of his employer and thereby caused the

amount to be remitted by the Applicant to the Plaintiff's account with the Defendant.

6. The Plaintiff's son, Sanjay, is not a party to the suit.

7. The facts of this case warrant the impleadment of the Applicant for more than one reason. Even assuming that each of these reasons by themselves would not warrant the same, taken together they do.

8. Firstly, it would undoubtedly be necessary to implead the Applicant in order to enable the Court effectively and completely to adjudicate upon and settle the question involved in this suit viz. whether the remittance was validly or invalidly made. The Defendant alone cannot assist the Court in adjudicating this issue. The Defendant was a stranger to this dispute. It is nobody's case that the Defendant was a party to the alleged fraud. The Applicant alone would be in a position to assist the Court in this regard.

9. I hasten to add that it is not for this reason alone that I am of the view that the Applicant ought to be impleaded. The amount which was remitted

is now in a "Sundry Deposit" account with the Defendant. Either the Plaintiff or the Applicant has a right to the money in that account. The Applicant therefore has a direct interest in the subject matter of the suit.

10. Thirdly, impleading the applicant as a Defendant in the suit will avoid multiplicity of proceedings, which is one of the factors to be taken into consideration while deciding an application under Order 1 Rule 10 (2) of the Code of Civil Procedure. In *Savitri Devi v. District Judge, Gorakhpur, (1999) 2 SCC 577*, a three Judge Bench of the Supreme Court held as under :-

"8. The facts set out by us in the earlier paragraphs are sufficient to show that there is a dispute as to whether the first defendant in the suit was a party to the order of injunction made by the Court on 18-8-1992. The proceedings for punishing him for contempt are admittedly pending. The plea raised by him that the first respondent had played a fraud not only against him but also on the Court would have to be decided before it can be said that the sales effected by the first defendant were in violation of the order of the Court. The plea raised by Respondents 3 to 5 that they were bona fide transferees for value in good faith may have to be decided before it can be held that the sales in their favour created no interest in the property. The aforesaid questions have to be decided by the

Court either in the suit or in the application filed by Respondents 3 to 5 for impleadment in the suit. If the application for impleadment is thrown out without a decision on the aforesaid questions, Respondents 3 to 5 will certainly come up with a separate suit to enforce their alleged rights which means a multiplicity of proceedings. In such circumstances, it cannot be said that Respondents 3 to 5 are neither necessary nor proper parties to the suit.

9. Order I Rule 10 CPC enables the court to add any person as a party at any stage of the proceedings if the person whose presence before the court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all the questions involved in the suit. Avoidance of a multiplicity of proceedings is also one of the objects of the said provision in the Code."

11. A rejection of this application would necessitate the Applicant filing a suit against the Plaintiff, the Defendant and the said Sanjay. Instead of the same, this issue could conveniently be adjudicated upon in this suit itself.

12. Fourthly if the Applicant were to file a separate suit, there is a possibility of conflicting decisions between this suit and such a suit. As observed earlier, the Defendant by itself will not be in a position to render any assistance in respect of

the allegations made by the Applicant. There is a possibility therefore of the suit being decreed against the Defendant without this issue even being adjudicated upon effectively. In the event of the Applicant being driven to filing a separate suit there is a possibility of the Applicant succeeding in establishing the allegations made by it and obtaining a decree in its favour. In such a situation there would be an apparent conflict between the decree passed in the two suits. Even if the Defendant Bank were to file interpleader proceedings, there would be a possibility of such a conflict of decisions.

13. In the circumstances, the Chamber Summons is made absolute in terms of prayer (a).

14. In view of this order neither party has any objection to the said Sanjay Subhash Kurdekar being added as Defendant No.3 to the suit. The said Sanjay Subhash Kurdekar is accordingly added as Defendant No.3 to the suit.

15. Mr.Bhandari, the learned counsel appearing on behalf of the Plaintiff states that the Plaintiff is not aware of the whereabouts of her son Sanjay.

16. The amendments to be carried out on or before
7th April, 2006.